

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:

JAMES R. MCCALLISTER
BARBARA J. MCCALLISTER

In Proceedings
Under Chapter 13

Case No.02-60155

Debtor(s).

OPINION

Ford Motor Credit Company ("Ford") seeks relief from stay to enforce its rights under a vehicle lease agreement with the debtors concerning their 2000 Ford Explorer. Ford contends that the debtors are in default on payments under the lease and that Ford is not adequately protected because the debtors' plan treats Ford's interest under the lease as a secured claim. The debtors respond that Ford failed to object to confirmation of their plan and that, as a result, Ford is bound by their confirmed plan, which provides for payment to Ford as a secured creditor.

The facts are not in dispute. On February 13, 2002, the debtors filed a Chapter 13 petition and scheduled Ford as a secured creditor with collateral consisting of the debtors' 2000 Ford Explorer. The debtors' Chapter 13 plan treated Ford as a secured creditor to be paid the value of its collateral, with the balance of its claim paid as an unsecured claim. The plan estimated the amount of Ford's claim at \$16,000.00 and alleged the value of its collateral as \$14,155.00

Ford was notified of the debtors, bankruptcy filing and received a copy of their Chapter 13 plan. In addition, Ford was notified that any objection to confirmation must be filed by May 23, 2002, and that, in the absence of objections, the plan would be confirmed. Ford did not object to confirmation of the debtors' plan. Instead, on May 13, 2002, Ford filed a proof of claim showing that it had a "secured claim"

in the debtors' motor vehicle and that the value of its collateral was \$10,308.34. Ford further listed the total amount of its claim at the time the case was filed as "\$10,308.34 @ 7.5%." Ford's proof of claim included no exhibit summary showing supporting documentation for its claim.¹

On May 24, 2002, in the absence of objections, the Court entered an order confirming the debtors' Chapter 13 plan. Two months later, on July 23, 2002, Ford filed its motion for relief from stay, alleging that it was not being paid pursuant to its lease agreement and was entitled to enforce its rights in the debtors' vehicle. At hearing, Ford acknowledged that it failed to object to the debtors' plan treating it as a secured creditor. However, Ford asserted that, having filed its claim "as a lease," it should not be deprived of its rights as lessor of the debtors' vehicle in the absence of an adversary proceeding determining its interest.

The Court finds no merit in Ford's position. Contrary to Ford's assertion, the proof of claim filed by Ford clearly designates its interest as a "secured claim" and contains no reference to any lease agreement with the debtors. (See Claims Register, Claim No. 10, filed May 13, 2002.) Ford argues that it was unable to adequately indicate its interest as a lessee because the Court's rules require supporting documents to be listed in a "summary of exhibits" rather than filed as attachments to the proof of claim. Ford, however, did not include such a summary with its proof of claim and, thus, failed to provide even this minimal amount of information about its lease interest. Further, Ford could have indicated its interest as a lessee on the claim form itself, by checking the box labeled "other" and describing its interest in the space provided. Because Ford filed its claim as secured, there was no reason for either the debtors or the trustee to make further inquiry into the nature of Ford's interest by reviewing the parties' agreement.

¹Pursuant to the Court's rules concerning the filing of proofs of claim, supporting documents are to be listed in a "summary of exhibits" that is filed with the proof of claim. See Order Adopting Electronic Case Filing Procedures, entered February 20, 2002, Ex. 1 to Standing Order 02-1, par. II(A)(3)(a), at 2.

It is not uncommon for a security interest to be disguised as a lease, and when Ford's own proof of claim characterized its interest as a secured claim, the debtors were justified in assuming that Ford held a security interest in their vehicle. Ford not only filed its claim as secured, but also failed to object to the debtors' plan treating it as secured or to file a motion to have its interest determined as a lease. Given Ford's own presentation of its interest as a secured claim, no grounds exist to sustain Ford's belated attempt to enforce its interest as lessor of the debtors, vehicle.

Even if Ford had adequately presented its interest as lessor in a pre-confirmation claim, such claim would not, of itself, have served as an objection to confirmation of the debtors, plan. A creditor that disagrees with its treatment under a Chapter 13 plan must file an objection to confirmation and may not rely on the filing of a claim setting forth its interest, as nothing in the Bankruptcy Code or Rules permits a proof of claim to serve a dual function as an objection to confirmation. See In re Duggins, 63 B.R. 233, 239 (Bankr. C.D. Ill. 2001). Rather, because all creditors receive a copy of the Chapter 13 plan but not proofs of claim, the plan confirmation process is the accepted procedure for ensuring adequate notice of and opportunity to object to proposed secured claim amounts which affect the amount of money that unsecured creditors receive. Duggins at 240.

Section 1327 of the Code sets forth the res judicata effect of a confirmed plan, stating that “[t]he provisions of a confirmed plan bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan.” 11 U.S.C. § 1327(a). A confirmed plan operates as a court-approved contract or consent decree binding all parties. In re Harvey, 213 F.3d 318, 321 (7th Cir. 2000). Thus, a creditor objecting to treatment of its claim under the plan must file an objection or be bound by the terms of the confirmed plan. Duggins, at 236.

When, as in the present case, a creditor disputes the binding effect of a confirmed Chapter 13 plan, the court must determine, first, whether the creditor received adequate notice that its rights would be modified by the plan's treatment of its claim and, second, whether the nature of the modification is of a kind appropriate for determination through the plan confirmation process as a contested matter, as opposed to the kind of issue requiring an adversary proceeding. See Duggins, at 237. If both questions are answered in the affirmative, the confirmed plan should be accorded the res judicata effect mandated by § 1327(a).

Here, it is undisputed that Ford received adequate notice of the debtors' Chapter 13 plan that modified its rights as lessor of the debtors' vehicle, thereby satisfying the first element of the test. It is, moreover, well-established that the question of whether an agreement is a true lease or a disguised security agreement is a contested matter and not an issue that must be determined by an adversary proceeding. See In re Smith, 259 B.R. 561, 565 (Bankr. D.S.C. 2000). Thus, whether Ford had a lease or security interest in the debtors' vehicle could have been determined through the filing of an objection to confirmation, thereby satisfying the second element.

Since Ford was given proper notice and an opportunity to object to the debtors' plan and since determination of its interest as a lease or security interest did not require an adversary proceeding but could be properly determined through the plan confirmation process, the binding effect of the debtors' confirmed plan pursuant to § 1327(a) precludes any subsequent consideration of Ford's interest in the debtors' vehicle. See In re Durham, 260 B.R. 383, 391-93 (Bankr. D.S.C. 2001); In re Minzler, 158 B.R. 720, 721 (Bankr. S.D. Ohio 1993). Having failed to act prior to confirmation, Ford is bound by the provisions of the confirmed plan and is not entitled to relief from stay because of its treatment as a secured creditor.

Accordingly, the Court finds that Ford's motion for relief from stay should be denied.

SEE WRITTEN ORDER.

ENTERED: November 4, 2002

/s/ Kenneth J. Meyers
UNITED STATES BANKRUPTCY JUDGE